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10/29/87

FG006-01  
FG051

One folder from the Office of  
Howard Baker received in ORM re

Judge Robert Bork. and his nomination as  
asso. justice.

ENCLOSURES PAID OVERSIZE ATTACHMENTS 5750

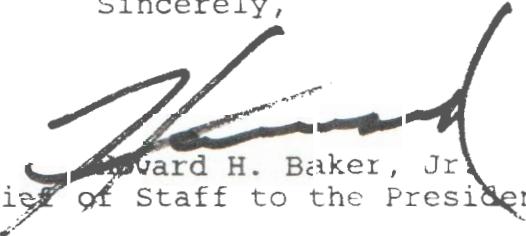
THE WHITE HOUSE  
WASHINGTON

October 16, 1987

Dear John:

I am delighted with your decision on Judge Bork.

Sincerely,



Howard H. Baker, Jr.  
Chief of Staff to the President

The Honorable John Heinz  
United States Senate  
Washington, D.C. 20510

HHB:nsw

10-1-87

THE WHITE HOUSE  
WASHINGTON

Ken:

✓

Cutler said:

"I'm not optimistic

about Specter."

R

Would a meeting with Specter

play role - do any good?

THE WHITE HOUSE  
WASHINGTON

October 14, 1987

MEMORANDUM FOR SENATOR BAKER

FROM: JOHN C. TUCK

SUBJECT: SUMMARY OF SENATOR BAKER'S COMMUNICATIONS  
ACTIVITIES AND MEETINGS ON BEHALF OF JUDGE BORK

The following summarizes your communications activities and meetings on behalf of Judge Robert Bork:

Communication activities

1. Speeches

Address to the NAACP in New York	- July 9, 1987
Address Minority Business Groups Briefing	- July 15, 1987
Address to Political Appointees	- July 21, 1987
Address to Political Appointees	- July 23, 1987
Address at Public Liaison Briefing	- July 29, 1987
Address to Junior Statesmen	- August 4, 1987
Address to California Republican Party Dinner in Los Angeles	- August 24, 1987
Address to Citizens for the Republic Luncheon in Los Angeles	- August 25, 1987
Address to American Farm Bureau Board of Directors in Chicago	- September 1, 1987
Address to Associated Press Broadcasters Board of Directors	- September 17, 1987
Address to American Newspaper Publishers Association	- September 23, 1987
Address to Scripps-Howard Editors	- September 28, 1987
Address Business Leaders	- September 29, 1987
Address Public Liaison Briefing	- September 30, 1987

Address to CEO's	- October 1, 1987
Address to Associated Press Board of Governors	- October 6, 1987
Address to Associated Press Board Members	- October 7, 1987
Address to Southern Newspaper Publishers Association	- October 12, 1987

## 2. Television

McNeill/Lehrer Interview	- August 5, 1987
Interviews with CBS & ABC	- August 6, 1987
Interviews with NBC & CNN	- August 7, 1987
Interview with Citizens Network	- August 10, 1987
Interview with Today Show	- August 13, 1987
Interview with CNN	- August 13, 1987
Interview with Face the Nation	- August 16, 1987
Interview with CBS	- August 26, 1987
CONUS	- September 11, 1987
WOMT (Omaha, Nebraska)	
WBBM (Chicago, Illinois)	
KPRC (Houston, Texas)	
KOB (Albuquerque, New Mexico)	
KWTW (Oklahoma City, Oklahoma)	
WBTV (Charlotte, North Carolina)	
Interview with Meet the Press	- September 13, 1987
One-on-One	- September 14, 1987
KATV (Little Rock, Arkansas)	
KCBS (Los Angeles, California)	
WCBS (New York, New York)	
WBRC (Birmingham, Alabama)	
WKIA (Atlanta, Georgia)	
WMC (Memphis, Tennessee)	
Interview with CNN	- September 14, 1987
Interview with Meet the Press	- September 20, 1987

Interview with McNeill/Lohrer	- October 2, 1987
Interview with CBS	- October 2, 1987
CONUS	- October 5, 1987
Newsfeed Network (Westinghouse)	- October 5, 1987
Potomac News Bureau	- October 5, 1987

### 3. Reporters/Written Press

Time Magazine Interview	- July 30, 1987
<u>The Washington Times</u> Interview	- July 30, 1987
Time Interview	- August 12, 1987
Newsweek Interview	- August 12, 1987
Hugh Sidey Interview	- August 12, 1987
<u>St. Petersburg Times</u> Interview	- September 17, 1987
Time Magazine Interview	- October 1, 1987

### 4. Editorials

<u>Arizona Republic</u>	- September 13, 1987
"Baker: A vital Role to Play in War on Crime"	
<u>Chicago Sun Times</u>	- September 13, 1987
"Howard Baker defends Bork's civil rights record"	

### 5. Telephone Calls

Senator John Stennis	- July 21, 1987
Senator Lawton Chiles	- July 22, 1987
Senator Bob Graham	- July 21, 1987
Senator Alan Dixon	- July 21, 1987
Senator Bennett Johnston	- July 21, 1987
Senator Sam Nunn	- July 21, 1987
Senator Wyche Fowler	- July 22, 1987
Senator Terry Sanford	- July 21, 1987
Senator Richard Shelby	- July 22, 1987
Roger Smith, Chairman, GM	- August 6, 1987
Senator Bob Packwood	- August 13, 1987
Nicholas Katzenbach	- September 14, 1987
Senator Robert Packwood	- September 16 & 23, 1987
Senator Pete Domenici	- September 16 & 20, 1987
Senator Phil Gramm	- September 17 & 22, 1987
Senator William Roth	- September 18, 1987
Senator Ted Stevens	- September 18, 1987
Senator Orrin Hatch	- September 24 & 30th, October 1, 1987 10/14/87 12:00 p.m.

Senator Warren Rudman	- September 25, 1987
	October 7, 1987
Senator Malcolm Wallop	- September 25, 1987
Senator Daniel Inouye	- September 25 & 28, 1987
Senator Rudy Boschwitz	- September 25,
	October 5, 6, & 8, 1987
Senator Robert Byrd	- September 28 &
	October 5, 1987
Senator Jesse Helms	- September 30, 1987
Senator Ernest Hollings	- September 30, &
	October 6, 1987
Senator Mark Hatfield	- October 5, 1987
Senator Frank Murkowski	- October 7, 1987
Senator William Cohen	- October 8, 1987

Meetings

Senior Staff Meeting	- July 6, 1987
Meeting with Senators Thurmond, Dole, Specter and Grassley	- July 8, 1987
Meeting with Senator Robert Byrd and Judge Bork	- July 9, 1987
New York Times Editorial Board Session in New York	- July 9, 1987
Senior Staff Meeting	- July 14, 1987
Meeting with Jewish Leaders	- July 15, 1987
Senior Staff Meeting	- July 16, 1987
Senior Staff Meeting	- July 22, 1987
Meeting with Senator Weicker and Judge Bork	- July 28, 1987
U.S. Chamber of Commerce Working Luncheon	- July 29, 1987
Senior Staff Meeting	- July 30, 1987
Senior Staff Meeting	- August 3, 1987
Bork Mock Hearing	- August 6, 1987
Senior Staff Meeting	- August 9, 1987
Senior Staff Meeting	- August 11, 1987
Jewish Leaders Meeting	- August 12, 1987

Senior Staff Meeting	- August 20, 1987
LA Times Editorial Board Breakfast (CEO's)	- August 25, 1987
LA Times Editorial Board Session	- August 25, 1987
Pre-Brief and Judge Bork Meeting in California	- August 28, 1987
Senior Staff Meeting	- August 28, 1987
Washington Times Editorial Board	- September 8, 1987
Senior Staff Meeting	- September 9, 1987
Senior Staff Meeting	- September 11, 1987
Bork Mock Hearing	- September 11, 1987
Will Ball Meeting	- September 11, 1987
<u>USA Today</u> Editorial Board	- September 14, 1987
Senior Staff Meeting	- September 16, 1987
Senior Staff Meeting	- September 18, 1987
Senior Staff Meeting	- September 22, 1987
Senator Specter Meeting	- September 22, 1987
Senior Staff Meeting	- September 23, 1987
Senator Dixon Meeting	- September 23, 1987
Senior Staff Meeting	- September 28, 1987
Senator Nunn Meeting	- September 29, 1987
Senator Graham Meeting	- September 29, 1987
Senior Staff Meeting	- September 30, 1987
Senator Boren Meeting	- September 30, 1987
Senator Heinz Meeting	- September 30, 1987
Senator Stafford Meeting	- September 30, 1987
Senator Chafee Meeting	- September 30, 1987
Senator Cohen Meeting	- September 30, 1987

Senator Hatfield Meeting	- September 30, 1987
Senators Dole, Simpson and Thurmond Meeting	- October 1, 1987
Senator Breaux Meeting	- October 1, 1987
Senator Heflin Meeting	- October 1, 1987
Senator Stafford Meeting	- October 2, 1987
Senator DeConcini Meeting	- October 2, 1987
Senator Heinz Meeting	- October 2, 1987
Senator Exxon Meeting	- October 2, 1987
Senior Staff Meeting	- October 2, 1987
Senator Dixon Meeting	- October 6, 1987
Senator Chiles Meeting	- October 6, 1987
Senator Graham Meeting	- October 6, 1987
Senior Staff Meeting	- October 6, 1987
Senior Staff Meeting	- October 7, 1987
Senator Stevens Meeting	- October 7, 1987
Senior Staff Meeting	- October 8, 1987
Republican Policy Lunch	- October 13, 1987

THE WHITE HOUSE  
Office of the Press Ecretary

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For Immediate Release

October 9, 1987

STATEMENT BY THE PRESIDENT

I am pleased by Judge Bork's decision to go forward with his nomination for the Supreme Court.

Over the last few weeks, there has been considerable discussion about Judge Bork. His opponents mounted an attack based on innuendos, mistruths and distortions to shield Bob Bork's real record of integrity, decency, fairness, and, above all, judicial restraint.

Our efforts will be focused on setting the record straight with the American people. It is time to remove the special interests from the judicial selection process. It is time to stop those who are determined to politicize the judiciary, and try to accomplish through the courts what they cannot accomplish through the legislature.

The American people want a Supreme Court Justice who interprets the law, not makes it; who is concerned about victim's rights, not just the rights of criminals. The time is now to set the record straight and to be accountable to the people, not the special interests.

# # #

More than three months ago, I was deeply honored to be nominated by the President for the position of Associate Justice of the Supreme Court of the United States.

In the 100 days since then, the country has witnessed an unprecedented event. The process of confirming Justices for our nation's highest Court has been transformed in a way that should not, indeed must not, be permitted to occur ever again.

The tactics and techniques of national political campaigns have been unleashed on the process of confirming judges. That is not simply disturbing. It is dangerous.

Federal judges are not appointed to decide cases according to the latest opinion polls. They are appointed to decide cases impartially according to law. But when judicial nominees are assessed and treated like political candidates the effect will be to chill the climate in which judicial deliberations take place, to erode public confidence in the impartiality of our judges, and to endanger the independence of the judiciary.

In politics the opposing candidates exchange contentions in their efforts to sway the voters. In the give and take of political debate, the choice will, in the end, become clear. A judge, however, cannot engage. Political campaigning and the judge's function are flatly incompatible. In two hundred years, no nominee for Justice has ever campaigned for that high office. None ever should. And I will not.

This is not to say that my public life -- the decisions I have rendered, the articles I have written -- should be immune from consideration. They should not. Honorable persons can disagree about these matters. But the manner in which the debate is conducted makes all the difference. Far too often the ethics that should prevail have been violated and the facts of my professional life have been misrepresented.

It is, to say no more, unsatisfying to be the target of a campaign that by necessity must be one-sided, a campaign in which the "candidate," a sitting federal judge, is prevented by plain standards of his profession, from becoming an energetic participant. Were the fate of Robert Bork the only matter at stake, I would ask the President to withdraw my nomination.

The most serious and lasting injury in all of this, however, is not to me. Nor is it to all of those who have steadfastly supported my nomination and to whom I am deeply grateful. Rather, it is to the dignity and integrity of law and of public service in this country.

I therefore wish to end the speculation. There should be a full debate and final Senate decision. In deciding on this course, I harbor no illusions. But a crucial principle is at stake. That principle is the way in which we select the men and women who guard the liberties of all the American people. That should not be done through public campaigns of distortion. If I withdraw now, that campaign would be seen as a success and it would be mounted against future nominees.

For the sake of the federal judiciary and the American people that must not happen. The deliberative process must be restored. In the days remaining I ask only that voices be lowered, the facts respected, and the deliberations conducted in a manner that will be fair to me and to the infinitely larger and more important cause of justice in America.

—  
THE WHITE HOUSE  
WASHINGTON

10/1/87

Sen Baker

It might help in talking  
with the two Alabama  
Senators to know that  
John Harbert has  
written to both of  
them in favor of Bork.  
Harbert is one of the  
biggest businessmen\*  
in Alabama.

\*and contributor Roger

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

October 1, 1987

ENDORSEMENTS OF JUDGE ROBERT H. BORK

Organizations as diverse as the American people themselves have endorsed the nomination of Judge Robert H. Bork to the Supreme Court. Attached in alphabetical order are excerpts of endorsements by 27 religious, ethnic, labor, business, women's and law enforcement groups.

AGUDATH ISRAEL OF AMERICA, an organization of 150,000 orthodox Jews:

Judge Bork's presence on the Supreme Court could have a positive influence in some of the great public policy issues of our day. . . the overall philosophy of judicial restraint so eloquently espoused by Robert Bork is ultimately in the best interests of all Americans, including minority communities like ours.

--- Memorandum by David Zwiebel,  
Director of Government Affairs  
and General Counsel

ALABAMA ASSOCIATION OF CHIEFS OF POLICE, an organization of 350 police chiefs throughout Alabama:

The Alabama Association of Chiefs of Police goes on record as publicly supporting the nomination of Robert H. Bork as a member of the United States Supreme Court.

--- Paul W. Locke, Jr., Secretary, and  
Chief of Police, Jacksonville, Alabama

AMERICAN FARM BUREAU FEDERATION, an association of 3.5 million rural families:

Judge Bork is a vigorous and thoughtful proponent of a respected judicial philosophy with which Farm Bureau's members wholeheartedly agree: judicial restraint.

Judge Bork's 25-year involvement with the law is a testament to his position that judges must apply the Constitution, the statutes, or controlling precedent, not their own moral, political, philosophical or economic preferences.

--- Dean R. Kleckner, President

ASSOCIATED BUILDERS AND CONTRACTORS:

ABC has endorsed President Reagan's nomination of Judge Robert H. Bork . . . ABC National President John Jones said that Bork's nomination "came as a result of his balanced record in all areas of the law, including the First Amendment, civil rights, labor law and criminal law. That is exactly the type of leadership we think the Supreme Court needs."

--- ABC Newsline

CITIZENS FOR AMERICA, an organization of 5,000 members:

Citizens for America believes questions of public policy should be argued and decided in the political arena, not the courts. Robert Bork's philosophy of judicial restraint preserves the separation of powers and the American people's ability to affect political change.

--- Jack Stevens, Executive Director

CONCERNED WOMEN FOR AMERICA, an organization of 573,000 members:

His over-arching legal philosophy is that courts should examine questions in light of what the Constitution says and what its framers intended it to mean. Certainly the American public does not want the Supreme Court to stray beyond what the Constitution says and create new rights out of thin air.

EAGLE FORUM, an organization of 80,000 members:

President Reagan has nominated a man who is qualified, experienced and not a judicial activist. He believes that judges should not engage in judicial legislation or policy making, but should stick to the Constitution.

FRATERNAL ORDER OF POLICE, an association of over 200,000 police officers:

It is in the best interests of the citizens of the United States and all law enforcement officers that Judge Bork be confirmed to the Supreme Court.

--- Resolution signed by  
Dewey R. Stokes, National President

GEORGIA SHERIFF'S ASSOCIATION:

The Sheriffs of Georgia feel that Robert Bork is eminently qualified to serve.

INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, a professional organization of 14,500 top law enforcement executives in the U.S. and 68 other nations:

Throughout his career, Judge Bork has demonstrated a deep concern for the problem of crime and lawlessness in our society. Judge Bork has also shown a great sensitivity to the problems facing today's law enforcement community. The position of Judge Bork on issues such as search and seizure, capital punishment, pornography, and swiftness and sureness of punishment for criminals demonstrates the courage necessary to effectively help deal with our increasing rate of crime.

--- Executive Committee Proclamation

--more--

KENTUCKY DELEGATION TO THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS:

. . . Those who think that Judge Bork will undo all the legal precedents that have been set in the previous generation certainly are not looking at the facts.

There will not be one objection to Judge Bork based on qualifications and ability. The only objection will be based upon somebody else's subjective judgment of what is Judge Bork's political philosophy. The fact of the matter is, the people of the United States do not want an active judiciary. They want a judiciary that will interpret, rather than make law. Judge Bork is classically that type of individual.

--- William A. Stone, Chairman

MEXICAN AND AMERICAN FOUNDATION, a California-based group instrumental in promoting business exchange between Mexico and the U.S. It has established eight business centers in the Southwest in five states whose purpose is to promote and aid in the development of minority-owned small businesses:

The Honorable Robert Bork is well prepared to serve in the high court and is a scholar in his field. As an American citizen, he should not be denied the opportunity to serve his country as a U.S. Supreme Court Justice.

--- Tony Valencia, Chairman and C.E.O.

NATIONAL ASSOCIATION OF EVANGELICALS. NAE represents 46,000 churches and 41 denominations with 5 million members across the country:

We're supporting Bork because We the People still believe in the Constitution as a written covenant -- binding upon us all and to be interpreted by the court -- rather than believing that the Constitution should be treated as a blank slate upon which judges may write their favorite solution to every problem which comes before them. Speaking for evangelicals, we are not willing to surrender our birthright for a blank paper.

NATIONAL ASSOCIATION OF PRO AMERICA, 3,000 members:

The National Association of Pro America supports Judge Bork unequivocally. We feel Judge Bork is the most eligible and qualified man for the Supreme Court, and that women have something to fear if he's not confirmed because he is a strong law and order man against crime. It is in the best interest of women in the United States to have such an individual on the Supreme Court.

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS:

. . . The choice of Judge Bork is brilliant. . . . He is a superb, highly qualified and balanced jurist who will serve this country well.

--- Louis H.T. Dehmlow,  
Chairman of the Board

NATIONAL DISTRICT ATTORNEYS ASSOCIATION, an organization of more than 10,000 members:

Judge Bork's career as a judge shows without question that he is within the mainstream of judicial thought in this country. . . . The National District Attorneys Association is proud to join the American Bar Association, Former President Gerald Ford, Elliot Richardson and many other distinguished Americans in their support of Judge Bork's confirmation.

--- Statement filed with the  
Senate Judiciary Committee

NATIONAL HUNGARIAN AMERICAN FEDERATION, an organization of 200,000 members:

We feel Judge Bork stands for law and order. His excellent record speaks for itself. We feel the President has made an excellent choice.

--- Laszlo Pasztor, Chairman

NATIONAL INDO-AMERICAN REPUBLICAN FEDERATION, a national organization for Asian Indian Republicans:

The ethnic groups totally concur with the appointment of Judge Bork to the highest office of the judicial system.

--- Krishan Mathur, Chairman

NATIONAL JEWISH COALITION, an organization of 7,000 Jewish Republicans:

Those who oppose Bork are seeking to change the norms that for two centuries have been followed in confirming Presidential judicial nominations. . . . The challenge to the Bork nomination comes from a desire to retain a politicized Court. By exploiting the Bork nomination for these narrow political and ideological reasons, liberals and Democrats are undermining the confirmation process.

Judge Bork is eminently qualified to serve in the post to which he has been named: neither ideology nor political opportunism should prevent him from doing so.

NATIONAL REPUBLICAN ASIAN ASSEMBLY, an organization with chapters in seven states:

Judge Bork would serve the people with traditional values which Asian-Americans firmly believe in: Family values, the work ethic, self-reliance and equal opportunity on the basis of merit.

--- Dr. Jane Hu, National Chair

--more--

ORDER SONS OF ITALY IN AMERICA, an organization of 150,000 members:

Judge Bork is widely acknowledged to enjoy an upstanding character, an outstanding judicial temperament, the highest degree of intelligence and a scholarship of the first rank; and

Judge Bork's judicial philosophy on matters of significant import is deferential to the concept of democratic choice. . . .

. . . The Order of the Sons of Italy in America . . . deplores the so called "crusade" to stop Judge Bork's confirmation by the United States Senate and takes exception to the urging of ideology as the qualifying test to supplant traditional considerations of character, temperament, intelligence and scholarship for appointment to the high court.

--- Resolution Approved by the Supreme Council

PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION:

Robert Bork, a native son of Pennsylvania, is a distinguished legal scholar and highly qualified jurist with unblemished legal credentials.

POLISH AMERICAN CONGRESS, an organization of 10 million members:

Robert Bork's analytical and judicial approach with a deep understanding and concern for our nation makes him the ideal justice for the Supreme Court. We urge his confirmation.

--- Aloysius Mazewski, President

RENAISSANCE WOMEN, a political group with 5,000 members:

President Reagan chose Judge Bork and it is his right under our system to do so. Judge Bork is qualified and fair. We must stick with the procedures as outlined in the Constitution -- there is no reason for Judge Bork to be disqualified.

UKRAINIAN CONGRESS COMMITTEE OF AMERICA, an organization of 750,000 members:

Judge Robert Bork's judicial and intellectual qualities are well-respected and recognized as superior by jurists of both liberal and conservative viewpoints. As an appellate judge . . . he has long-proven his legal capabilities and expertise.

--- Ignatius Billinsky, President

U.S. HISPANIC CHAMBER OF COMMERCE, a national association representing over 100,000 Hispanic businesses around the country:

Judge Bork is a person who will uphold the Constitution of the United States, and who is extremely qualified to serve on the high court.

--- Hector Barreto, President

WE THE PEOPLE, a California-based citizen's committee to Support  
the Confirmation of Judge Robert Bork:

What the public . . . has indicated in no uncertain  
terms is that it wants a jurist who will practice  
judicial restraint and will get back to the meaning  
of the Constitution. Robert Bork is that jurist.

--- Bill Roberts, Founder

END

THE WHITE HOUSE  
Office of the Press Secretary

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For Immediate Release

October 1, 1987

During the Senate Judiciary Committee hearings on the confirmation of U.S. Court of Appeals Judge Robert Bork to be an Associate Justice of the Supreme Court, which concluded yesterday, 63 individuals appeared in his behalf. These 63 individuals and the groups they represent demonstrate the broad-based support Judge Bork's confirmation enjoys. Endorsements from such an impressive array of, among others, former high government officials, members of the legal establishment, and academics are a testament to Judge Bork's outstanding qualifications to serve as an Associate Justice and conclusively illustrate the great respect his judicial philosophy commands. The following is a listing of those individuals:

- . The Honorable Gerald R. Ford, former President of the United States
- . The Honorable Robert Dole, U.S. Senator from Kansas
- . The Honorable John C. Danforth, U.S. Senator from Missouri
- . The Honorable Hamilton Fish, Jr., U.S. Congressman from New York
- . The Honorable Warren E. Burger, former Chief Justice, Supreme Court of the United States; Chairman of the Commission on the Bicentennial of the U.S. Constitution
- . The Honorable Lloyd N. Cutler, Counsel to former President Jimmy Carter
- . The Honorable Griffin B. Bell, former U.S. Attorney General
- . The Honorable Herbert Brownell, former U.S. Attorney General
- . The Honorable Elliot Richardson, former U.S. Attorney General
- . The Honorable Edward Levi, former U.S. Attorney General
- . The Honorable William P. Rogers, former U.S. Attorney General; former U.S. Secretary of State

- The Honorable William Saxbe, former U.S. Attorney General; former U.S. Senator from Ohio \*/
- The Honorable William French Smith, former U.S. Attorney General
- The Honorable Carla A. Hills, former Secretary of Housing & Urban Development; former U.S. Assistant Attorney General
- The Honorable James R. Thompson, Governor of Illinois; former United States Attorney
- The Honorable Dick Thornburgh, former Governor of Pennsylvania; former United States Attorney
- Fred Foreman, President, National District Attorneys Association
- Robert R. Fuesel, President, Federal Criminal Investigators Association
- Dewey R. Stokes, President, Fraternal Order of Police
- Jerald Vaughn, Executive Director, International Association of Chiefs of Police
- John J. Bellizzi, Executive Director, International Narcotics Enforcement Officers Association
- Donald Baldwin, Executive Director, National Law Enforcement Council
- Cary Bittick, Executive Director, National Sheriffs Association
- Lt. Johnny Hughes, National Troopers Coalition
- Frank Carrington, Executive Director, Victims Assistance Legal Organization
- Beverly LaHaye, President, Concerned Women for America
- John C. Shepherd, former President, American Bar Association
- Wallace D. Riley, former President, American Bar Association
- Charles S. Rhyne, former President, American Bar Association
- James T. Bland, President, Federal Bar Association
- Roy Innis, Chairman, Congress for Racial Equality (CORE)

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\*/ Attended Senate Judiciary Committee hearings on behalf of Judge Bork on September 21, 1987, but was precluded from testifying by the Committee's schedule.

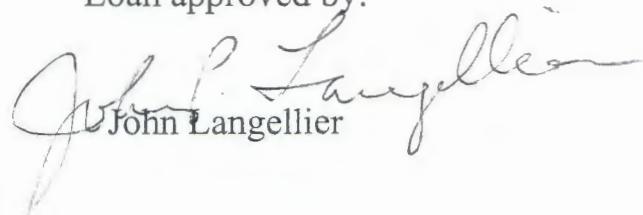
- Rabbi William Handler, Union of Orthodox Rabbis of the United States and Canada
- Gerhard Casper, former Dean, University of Chicago Law School
- Eugene V. Rostow, former Dean, Yale Law School; former Under Secretary of State
- Terrance Sandalow, former Dean, Michigan Law School
- Steven P. Frankino, Dean, Villanova University School of Law
- Maurice Holland, Dean, University of Oregon School of Law
- Ronald Davenport, former Dean, Duquesne Law School
- Thomas D. Morgan, Dean, Emory University School of Law
- Dallin Oaks, former Professor, University of Chicago Law School; former President, Brigham Young University; former Justice, Utah Supreme Court
- Professor Ronald Rotunda, College of Law, University of Illinois
- Professor Forrest McDonald, Department of History, University of Alabama
- Professor A. Leo Levin, University of Pennsylvania Law School
- Professor Daniel Meador, University of Virginia School of Law
- Professor Paul M. Bator, University of Chicago Law School; former Professor, Harvard Law School
- Professor Michael McConnell, University of Chicago Law School
- Professor Henry Monaghan, Columbia University School of Law
- Professor Lillian Riemer Bevier, University of Virginia School of Law
- Professor Thomas Campbell, Stanford University Law School
- Professor Richard Stewart, Harvard Law School
- Professor George Priest, Yale Law School
- Professor John Simon, Yale Law School
- Gary Born, Attorney at Law, Washington, D.C.; Adjunct Professor of Law, University of Arizona
- G. Read Carlock, Senior Partner, Riley, Carlock & Applewhite

- . Howard Krane, Esq., Managing Partner, Kirkland & Ellis
- . Professor Philip Areeda, Harvard Law School
- . Professor Thomas E. Kauper, University of Michigan Law School
- . Donald Baker, Esq., former U.S. Assistant Attorney General
- . James Halverson, Past Chairman of American Bar Association Antitrust Law Section
- . A. Raymond Randolph, former U.S. Deputy Solicitor General
- . Jewel LaFontant, former U.S. Deputy Solicitor General
- . Stuart Smith, former U.S. Assistant Solicitor General
- . Thomas Sowell, Fellow, Hoover Institute

ORIGINAL ON ONE YEAR LOAN TO:

NATIONAL CONSTITUTIONAL CENTER  
The Bourse  
Suite 560  
111 So. Independence Mall E.  
Philadelphia, Pa. 19106

Loan approved by:



John Langellier

Sinclair

THE WHITE HOUSE  
WASHINGTON

The AG STATES

THAT BORK

WANTS TO

STAY & FIGHT.

THE AG HAS

READ HIS PREPARED

STATEMENT.

Re Tuck

[Copy of original on loan]

BORK TALLY

<u>FOR (34)</u>	<u>LEANING FOR (8)</u>	<u>UNDECIDED (20)</u>	<u>LEANING AGAINST (15)</u>	<u>AGAINST (23)</u>
Armstrong	Boren ✓	Bentsen	Adams	Biden
Bond	D'Amato ✓	Byrd .	Baucus	Bradley
Boschwitz	Durenberger	Chafee	Bingaman	Burdick
Cochran	Evans	Chiles	Breaux	Cranston
Danforth	Hatfield ✓	Cohen	Bumpers	Dodd
Dole	Heinz ✓	DeConcini	Conrad	Glenn
Domenici	Murkowski	Dixon .	Daschle	Harkin
Garn	Stevens .	Exon	Gore	Kennedy
Gramm		Ford	Matsunaga	Kerry
Grassley		Fowler	Pryor	Lautenberg
Hatch		Graham .	Reid	Leahy
Hecht		Heflin .	Rockefeller	Levin
Helms		Inouye	Sanford	Meicher
Hollings		Johnston	Sasser	Metzenbaum
Humphrey		Moynihan	Weicker	Mikulski
Karnes		Nunn .		Mitchell
Kassebaum		Shelby		Packwood
Kasten		Specter .		Pell
Lugar		Stafford .		Proxmire
McCain		Stennis .		Reigle
McClure				Sarbanes
McConnell				Simon
Nickles				Wirth
Pressler				
Quayle				
Roth				
Rudman				
Simpson				
Symms				
Thurmond				
Trible				
Wallop				
Warner				
Wilson				

THE WHITE HOUSE

WASHINGTON

September 30, 1987

MEMORANDUM FOR SENIOR ADMINISTRATION OFFICIALS

FROM: THOMAS C. GRISCOM *3*  
SUBJECT: Judge Robert H. Bork

As the confirmation hearings conclude, we enter a new phase of the debate about Judge Bork. During the next several weeks each of you has an important role to play in building support for this nomination.

Attached are materials that should be of assistance to you in framing your prepared remarks and answers to press questions. I ask that in the weeks ahead each of you notify in advance the White House Office of Public Affairs (456-7170) and the White House Office of Media Relations (456-7730) of any domestic travel plans. Those offices will provide you with up-to-date guidance and schedule interviews with local reporters as appropriate.

The President has seen statements many of you have made in support of Judge Bork. Your continued participation is essential.

September 30, 1987

#### KEY POINTS FOR THE WEEKS AHEAD

- o Support for Judge Bork is a test of support for President Reagan.
- o The American people have consistently stated they believe the President should appoint judges who will be tough on crime. President Reagan has done this. This in part explains why law enforcement groups favor Judge Bork, and the American Civil Liberties Union opposes him.
- o Judge Bork enjoys support from across the political spectrum. His supporters include liberals and conservatives, Democrats and Republicans.
- o The same cannot be said about opposition to Judge Bork, which comes primarily from the special interests -- individuals and groups who have long demonstrated they are outside the American political mainstream.
- o These opponents have grown increasingly shrill in their attacks on Judge Bork. Many have resorted to distortions and misstatements in their attempts to undermine Judge Bork's impressive record. These tactics make the choice between the special interests and the American people's interest.
- o Judge Bork is superbly qualified to be the next Supreme Court Justice. He has been forthcoming with the Senate and with the American people. He believes that a judge should interpret the law, not make the law.

July 28, 1987

## WHITE HOUSE TALKING POINTS

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### JUDGE ROBERT H. BORK

#### THE PRESIDENT'S NOMINEE TO THE SUPREME COURT

##### Overview

- On July 1, the President nominated Judge Robert Bork to replace retiring Justice Lewis Powell on the Supreme Court. Judge Bork has served with great distinction on the U.S. Court of Appeals for the District of Columbia since 1982, when the Senate unanimously confirmed his appointment.
- Judge Bork is superbly well qualified to join the Supreme Court. The American Bar Association gave him their highest possible rating in 1981 -- "Exceptionally Well Qualified." Observers from across the political spectrum agree he is an outstanding intellectual, an impressive legal scholar and a premier Constitutional authority.
- Judge Bork is a mainstream jurist. He has been in the majority in 94 percent of the cases he has heard. Furthermore, none of his opinions has ever been reversed by the Supreme Court.
- The American people demand an effective, efficient government and they deserve prompt action on this nomination. Unwarranted delays in hearings and confirmation proceedings do a grave disservice to the Court and the Nation. The Supreme Court should have its full nine-member complement when it begins its October term.
- Ideology should have no role in the Senate's decision. The issue is whether the judges and the courts are called upon by the Constitution to interpret the laws passed by the Congress and the states -- the "judicial restraint view" -- or whether judges and the courts should write orders and opinions which are, in effect, new laws -- the "activist" view.
- Judge Bork believes that the Constitution requires law writing be left to legislative bodies. It is the role of the judiciary, in contrast, to interpret the laws which are enacted.
- Judge Bork deserves a fair hearing, and the Senate should ensure that he receives one.

## **WHITE HOUSE TALKING POINTS**

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### JUDGE BORK IS SUPERBLY QUALIFIED

- Judge Robert Bork is superbly well qualified to serve on the United States Supreme Court. His legal career to date has been impressive. Taken individually, his achievements in private practice, education, the executive branch and the judiciary would have been the high point of a brilliant career; he managed all of them.
- In more than 100 opinions from the D.C. Circuit, no majority opinion written by Judge Bork has been overturned by the Supreme Court.
- Moreover, the Supreme Court adopted the reasoning of several of his dissents when it reversed opinions with which he had disagreed.
- Highlights of Judge Bork's legal career:
  - Professor at Yale Law School for 15 years; holder of two endowed chairs. One of the Nation's foremost authorities on antitrust law and constitutional law. Author of dozens of scholarly works, including The Antitrust Paradox, a leading work on antitrust law.
  - Phi Beta Kappa; honors graduate of the University of Chicago Law School and managing editor of its law review.
  - An experienced practitioner and partner at Kirkland & Ellis.
  - Solicitor General of the United States, 1973-77, representing the United States before the Supreme Court in hundreds of cases.
  - Unanimously confirmed by the Senate for the D.C. Circuit in 1982, after receiving the ABA's highest rating -- "Exceptionally Well Qualified" -- given to only a handful of judicial nominees each year.

Mr. Bork...is a legal scholar of distinction and principle. . . . Differences of philosophy are what the 1980 election was about; Robert Bork is, given President Reagan's philosophy, a natural choice for an important judicial vacancy.

---- Editorial  
New York Times, 1981

## **WHITE HOUSE TALKING POINTS**

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September 10, 1987

### JUDGE BORK AND CRIMINAL JUSTICE

- Judge Robert H. Bork, the President's nominee for the Supreme Court, has demonstrated a clear understanding of the problems facing today's law enforcement professionals.
- President Reagan has described Judge Bork as a "tough, clear-eyed" jurist whose goal is "to assure real justice for all citizens, not to foster never-ending sparring matches between lawyers."
- "It's time we reassert the fundamental principle that the purpose of criminal justice is to find the truth -- not coddle criminals," President Reagan has said. "The constitutional rights of the accused must be protected, but so must the rights of law-abiding citizens."
- Nearly one-third of the Supreme Court's time is taken up with matters of criminal justice, and yet there has been little focus in the current debate about Judge Bork's views in this area.
- Judge Bork's nomination presents a crucial opportunity to continue our progress in the war against crime.

### Record as Solicitor General

- From 1973 to 1977, Judge Bork served as the Solicitor General of the United States, the federal government's chief spokesman and litigator before the Supreme Court.
- Solicitor General Bork advanced commonsense readings of the Constitution that would help -- not hinder -- the search for truth in criminal trials.
- As Solicitor General, Judge Bork argued for a broad view of consent as a valid basis for a police search, and that the Exclusionary Rule should not apply where police officers reasonably believed they had consent (U.S. v. Matlock, 1974).
- In U.S. v. Edwards (1974), Judge Bork argued that the Fourth Amendment did not necessitate a warrant to search an individual who is already lawfully in custody.
- And in U.S. v. Watson (1976), Solicitor General Bork successfully argued that the Fourth Amendment's warrant requirement does not require police officers to obtain a warrant to make an arrest in a public place, so long as they have probable cause that the suspect has committed, or is committing an offense.

## **WHITE HOUSE TALKING POINTS**

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- Solicitor General Bork argued and won the major death penalty cases of the 1970s. In the 1976 case of Gregg v. Georgia, Bork argued in a "friend-of-the-court" brief that the death penalty was not a violation of the Eighth Amendment's prohibition of cruel and unusual punishments. The Supreme Court agreed, in a decision supported by Justice Lewis Powell.
- It is worth noting that those who employ the "balance" argument against Bork rarely mention the margin by which the death penalty has been held constitutional in recent years. Last term, for example, the constitutionality of capital punishment in cases of especially brutal murders was reaffirmed by a single vote -- that of Justice Powell, whose seat Judge Bork would fill.

### As a Federal Judge

- As a member of the most important federal appeals court in the Nation since 1982, Judge Bork has built a strong record on criminal justice issues.
- For example, Judge Bork's opinion in U.S. v. James (1985), upholding a conviction for narcotics possession, held that the federal "knock and announce" statute allows the police to enter and prevent destruction of evidence in situations where the accused is well aware of the purpose of the police visit.
- In another decision, Judge Bork affirmed a conviction for possession of a controlled substance and held that the government had properly refused in a criminal trial to reveal the location of an undercover police surveillance post (U.S. v. Harley, 1982).
- While Judge Bork has opposed expansive interpretations of procedural rights that would enable apparently culpable individuals to escape justice, he has not hesitated to overturn convictions where constitutional or evidentiary conclusions compelled such a result.

## **WHITE HOUSE TALKING POINTS**

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### Judge Bork Endorsed by Law Enforcement Groups

- o Groups representing over 350,000 law enforcement professionals have endorsed Judge Robert H. Bork's nomination for the Supreme Court, including:
  - National District Attorneys Association;
  - International Association of Chiefs of Police;
  - National Sheriffs' Association;
  - National Association of Police Organizations;
  - Major City Chiefs association;
  - National Troopers Coalition;
  - International Narcotics Enforcement Officers Association; and
  - The Fraternal Order of Police.

It is in the best interests of the citizens of the United States and all law enforcement officers that Judge Bork be confirmed to the Supreme Court.

--- Fraternal Order of Police  
Resolution

## **WHITE HOUSE TALKING POINTS**

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### **BORK ON CIVIL RIGHTS**

- o In his arguments before the Supreme Court as Solicitor General, and as a member of the Court of Appeals, Bork has never advocated or rendered a judicial decision that was less sympathetic to minority or female plaintiffs than the position eventually taken by the Supreme Court or by Justice Powell. (This does not include cases challenging the constitutionality or permissibility of federal statutes or policies, where the Solicitor General is obliged to advocate the interests of the United States as a defendant.)
- o In addition, in a significant number of cases, Bork has advocated a broader interpretation of civil rights laws than either Justice Powell or the Supreme Court was willing to accept.

#### **Record as Solicitor General**

- o As Solicitor General, Robert Bork was responsible for the government arguing on behalf of civil rights in some of the most far-reaching civil rights cases in the Nation's history, sometimes arguing more expansive interpretations of the law than those ultimately accepted by the Court.
- o Among Bork's most important arguments to advance civil rights:
  - Bork urged a broad interpretation of the Voting Rights Act to strike down an electoral plan he believed would dilute black voting strength. The Court disagreed 5-3 (Beer v. United States).
  - The Court agreed with Bork that race-conscious redistricting of voting lines to enhance black voting strength was constitutionally permissible (United Jewish Organization v. Casey).
  - Bork argued in an amicus brief that discrimination on the basis of pregnancy was illegal sex discrimination. Six justices, including Justice Powell, rejected this argument. Congress later changed the law to reflect Bork's view (General Electric Co. v. Gilbert).
  - Bork argued that even a wholly race-neutral seniority system violated Title VII if it perpetuated the effects of prior discrimination. The Supreme Court, including Justice Powell, ruled against Bork's argument (Teamsters v. United States).

## **WHITE HOUSE TALKING POINTS**

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- Following Bork's argument, the Court ruled that civil rights laws applied to racially discriminatory private contracts (Runyon v. McCrary).

### On the Court of Appeals

- o As a member of the United States Court of Appeals since 1982, Judge Bork consistently upheld the rights of civil rights plaintiffs who had been victims of race and sex discrimination, frequently reversing lower courts to do so. For example:
  - Bork rejected a South Carolina county's claim that its switch to an "at-large" election system did not require preclearance from the Attorney General under the Voting Rights Act (County Council of Sumter County, South Carolina v. United States). He later held that the county had failed to prove that its new system had "neither the purpose nor effect of denying or abridging the right of black South Carolinians to vote."
  - Bork voted to reverse the district court and hold that the Equal Pay Act applies to the Foreign Service's merit system (Ososky v. Wick).
  - Bork reversed a district court's decision to dismiss a claim of racial discrimination against the U.S. Navy (Emory v. Secretary of the Navy). The district court had held that the Navy's promotion decisions were immune from judicial review. In rejecting the district court's theory, Bork held:

"Where it is alleged, as it is here, that the armed forces have trespassed upon constitutionally guaranteed rights through the promotion and selection process, the courts are not powerless to act. The military has not been exempted from constitutional provisions that protect the rights of individuals. It is the role precisely of the courts to determine whether those rights have been violated."

### Quotas in College Admissions

- o While a law professor, Bork wrote an Op-Ed piece for the Wall Street Journal in 1979 in which he criticized the Bakke decision. Since then, however, the Supreme Court has issued many other decisions affecting this issue and Judge Bork has never indicated or suggested that he believes this line of cases should be overruled.

## **WHITE HOUSE TALKING POINTS**

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### Public Accommodations

- In 1963, Bork wrote an article in the New Republic criticizing a proposal to outlaw discrimination in public accommodations such as restaurants and hotels. (This proposal eventually became part of the Civil Rights Act.) He claimed at the time that there was a significant distinction between discrimination imposed by law and discrimination practiced by private individuals.
- This 25-year-old article cannot fairly be used to criticize Bork's nomination. At his confirmation hearings for the position of Solicitor General, Bork repudiated the article:

"I should say that I no longer agree with that article. . . . It seems to me I was on the wrong track altogether. It was my first attempt to write in that field. It seems to me the statute has worked very well and I do not see any problem with the statute, and were that to be proposed today, I would support it."

--- Robert Bork, 1973

- His article, as does his subsequent career, makes clear his abhorrence of racism: "Of the ugliness of racial discrimination," Bork said, "there need be no argument."
- The article, well known at the time of his confirmation hearings in 1982, was not even raised during his unanimous Senate confirmation to the D.C. Circuit.

## WHITE HOUSE TALKING POINTS

SEPTEMBER 29, 1987

### JUDGE BORK AND CIVIL RIGHTS

"If I were a black man and knew my record as Solicitor General and a judge, I would not be concerned, because my civil rights record is a good one."

--- Judge Robert Bork  
testimony, 9/16/87

"Segregation is not only unlawful, but immoral."

--- Judge Robert Bork  
testimony, 9/16/87

- Judge Robert H. Bork, the President's nominee for the Supreme Court, will enforce the letter and spirit of America's civil rights laws.

#### Record as Solicitor General

- From 1973 to 1977, Judge Bork served as the Solicitor General of the United States, the federal government's chief spokesman in the Supreme Court. In this post, he presented the government's arguments before the Supreme Court in some of the most far-reaching civil rights cases in our history.
- The Solicitor General is ordinarily required to represent the federal government as a defendant when a federal law or policy is challenged. In these cases, defense of the government's position is the norm.
- Excluding these cases, the Supreme Court decided 19 substantive civil rights cases during Bork's tenure as Solicitor General. In these 19 cases, he had the option to argue the position indicated by his interpretation of the law. Solicitor General Bork sided with minority or female plaintiffs in 17 of those 19 cases.
- In the two cases in which Judge Bork argued a different opinion than that urged by the plaintiffs, a majority of the Court -- including Justices Harry Blackmun and Potter Stewart -- agreed with Bork. (Justice Lewis Powell supported Bork's position in one of the two cases and did not participate in the other.)

## **WHITE HOUSE TALKING POINTS**

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### Record as a Federal Judge

- As a member of the most important appeals court in the country, Judge Bork has joined in or authored opinions that establish, for example:
  - That Federal courts can review personnel decisions of the U.S. Armed Forces for unconstitutional discrimination, despite claims of exclusive authority by the executive branch;
  - That female flight attendants must not be paid less than male pursers to do essentially the same job; and
  - That the State Department's foreign service -- our government's diplomatic representatives abroad -- are subject to the Equal Pay Act.
- In all but 4 civil rights cases Judge Bork has heard as a federal judge, he has sided with the minority or female plaintiff raising a substantive legal claim of race or sex-based discrimination. In each of the 4 remaining cases, Judge Bork was joined by liberal members of the Appeals Court.

### Selected Issues

- Poll taxes. Much has been made of Judge Bork's disagreement with the Supreme Court's decision in Harper v. Virginia Board of Education which struck down the use of poll taxes in all circumstances. In fact, the case had nothing whatsoever to do with racially discriminatory poll taxes. Judge Bork has consistently stated he believes poll taxes (and any other form of voter qualification) are unconstitutional if levied in a racially discriminatory manner.
- Literacy tests. Judge Bork has consistently affirmed the right of Congress to strike down literacy tests where there is a history of discriminatory use. His position on this issue is indistinguishable from Lewis Powell's.

Judge Bork has criticized a Supreme Court decision that struck down a state's literacy requirements when there was no evidence to suggest discriminatory use or intent. In this decision, the Court departed from long-established precedent and conferred upon Congress the power to define the 14th Amendment. It was this unconstitutional abdication of judicial power to the legislature -- not its effect on literacy requirements -- that troubled Judge Bork.

## **WHITE HOUSE TALKING POINTS**

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- One man, one vote. Like Justices Potter Stewart, John Harlan, and Felix Frankfurter, and many prominent legal scholars, Bork criticized the rigid mathematical requirements set out in the Warren Court's "one-man-one-vote" decisions. However, Bork believes the Supreme Court can properly act to remedy any malapportionment that systematically frustrates the will of the majority.

There is considerable evidence in Bork's public career to demonstrate his support for voting rights. In the mid-1970s, as a court-appointed referee, Judge Bork redrew Connecticut's state legislative districts. Bork's plan was so fair, in fact, that Connecticut Republicans were furious with him.

# # #

CHATTANOOGA NEWS-FREE PRESS  
September 14, 1987

## Vicious Smear Of Judge Bork

A man who is surely one of our country's most able judges, a man of clearly proved qualifications, is under smear attack for one reason: He is a conservative who has been nominated by President Ronald Reagan to become a member of the Supreme Court of the United States. He is Judge Robert H. Bork of the U.S. Court of Appeals.

You heard no disparaging word about Judge Bork until he received the nomination that was an honor to him and offered hope for improvement in the nation's highest court.

As a member of the sensitive Court of Appeals based in the District of Columbia, Judge Bork has written 106 decisions and joined in 395 others without having a single one of the 401 reversed by the Supreme Court. It's an amazing record. It should indicate that Judge Bork has been a very sound judge.

There was every reason for him to be. He is a brilliant man. He is a legal scholar. He is a former professor of law at Yale University. He served previously as solicitor general of the United States. On two occasions — before he became solicitor general and before he became a Court of Appeals judge — he was subjected to searching investigation and then gained overwhelming approval by the Senate.

With such a sound record as this, why is Judge Bork under attack today?

There is only one reason.

He believes strongly in upholding the Constitution of the United States as it is written and meaning only what it says.

That should be the highest qualification of all. But liberals and a variety of radical pressure groups do not want a sound justice added to the Supreme Court. They want someone who is a radical doctrinaire who will usurp

power not belonging to the court under the Constitution. They want to get a justice who will help legislate a left-wing agenda that cannot be gotten through Congress and the president. Or failing that, they want to prevent the confirmation of a new Supreme Court justice who might swing the court away from liberal activism.

That Judge Bork has aroused the ire of such people is another recommendation for him.

Liberal presidents nominate liberals to be Supreme Court justices, and have a right to do so. Conservative presidents have an equal right to nominate conservative judges for the Supreme Court, and President Reagan has done so. There being no just reason for rejection of Judge Bork, he should be promptly confirmed.

Liberal Sen. Joseph Biden, D-Del., chairman of the Senate Judiciary Committee that must examine Judge Bork, first spoke favorably of Judge Bork's qualifications. But now running for president and appealing to radical pressure groups, Sen. Biden has indicated opposition to Judge Bork and imposed unconscionable delay in beginning hearings. He thus provided extra time, the longest for any Supreme Court nomination, for opponents to marshal their smear campaign and try to erect roadblocks.

And now, this week, Judge Bork's nomination must run the gauntlet of radical opposition. The nature of his critics indicates his great qualifications.

This will be a hard fight. The final vote in the Senate will be close. Judge Bork deserves to win. If he does, justice will triumph. If he does not, justice will have suffered a serious blow that should be of concern to every thoughtful American.

Joseph Biden threw in the towel yesterday on his presidential race, having to admit plagiarism and lying on his presidential resume. He pledges to devote all his energies to the Supreme Court fight. But his admissions raise the question: Just who is Joe Biden to harangue Robert Bork?

For that matter, who is Teddy Kennedy? We're sure that TV viewers across the land need no reminder that his most extensive legal experience centers on the law of inquest. When Yale law professor Burke Marshall testified against Judge Bork, though, viewers might have forgotten that he was the lawyer Senator Kennedy's staff called the night of Chappaquiddick. When they listen to Senator Howard Metzenbaum's questioning, viewers might need to be reminded that he had to return a \$250,000 finder's fee for a couple of phone calls putting together a hotel deal in Washington. When Pat Leahy casts stones, they might need to be reminded that he recently had to leave the Intelligence Committee for leaking classified national security documents.

We resurrect this dirt because there is no other way to put into perspective the spectacle unfolding before the nation's eyes: A spiteful and hypocritical demagoging of one of the handful of most distinguished Supreme Court nominees of the century. There is no other way to respond to, say, Senator Leahy badgering Judge Bork for failing to do pro bono legal work even though he had time to earn large consulting fees during two of the years he taught at Yale. Judge Bork tearfully said there was a special reason for this, but that he didn't want to go into it. Senator Gordon Humphrey set the record straight, explaining that the outside fees went to pay the huge medical bills from Prof. Bork's first wife's long losing fight against cancer. Senator Humphrey also noted that Judge Bork's time as a Marine, professor, solicitor general and judge came to 28 years in public service when he could have been making a fortune in law.

"I have watched these processes since I was a student in law school and I don't think there has ever been one with more hype and more disinformation than what I have observed in recent days," an outraged former Chief Justice Warren Burger testified yesterday. "If Judge Bork is not in the mainstream then neither am I."

Under Senator Biden's chairmanship, the spite extends not only to the witness but also to his many distinguished supporters. Our hats go off to William Saxbe, who walked out of the hearings on Monday after being one of

four former attorneys general kept waiting for more than six hours so anti-Bork witnesses William Coleman, Barbara Jordan, Andy Young and Mr. Marshall would carry the hearings beyond the deadline for the evening news shows. By the time William French Smith and Edward Levi were called to support the nominee, they were already late for a plane.

Tuesday's star witness was Harvard's Laurence Tribe, a "consultant" to Senator Biden's pre-hearing report against Judge Bork. Mr. Tribe got three hours to warn of "chaos" on the court if Judge Bork is confirmed. Mr. Tribe claimed that Judge Bork would be the first justice to believe that legal rights must be found in the Constitution. University of Chicago law professor Michael McConnell was aghast, saying Mr. Tribe's claim was "obviously untrue." After this, nine chiefs of law enforcement agencies supporting Judge Bork were rushed through. Lloyd Cutler, the liberal Democrat who bravely supports Judge Bork, was punished with a long wait before being allowed to testify.

Throughout all of this runs the blatant distortion of Judge Bork's views. He spent five days giving his views in unprecedented detail, parsing statutes and footnotes to give the nation a civics lesson in the proper, limited role for judges. Oblivious to this, Senators Biden and Kennedy repeatedly accused him of favoring poll taxes, literacy tests and police searching bedrooms for contraceptives. Judge Bork replied that it is "a regular form of rhetoric to say that if you would say a statute is *not* unconstitutional, that must be because you like the statute." He said, "The question is never whether you like the statute, the question is, is it in fact contrary to the principles of the Constitution?" This is the essence of the Bork philosophy, which his critics can answer only with venom.

We're sure, especially after listening to Senator Biden's unctuous withdrawal speech yesterday, that the Republic will not soon see the end of the poison. The Bork nomination provided the senator an excuse; he could profess to withdraw not because his own low character became evident to all, but for the higher purpose of dragging into the mud a nominee whose integrity and eminence is unchallenged. His meaning was clear: Having destroyed himself in his presidential bid, he would make his mark defeating Judge Bork. If all else fails, no doubt he will act out his spite by leading a filibuster to keep the Senate from voting its will.

THE WALL STREET JOURNAL

THURSDAY, SEPTEMBER 24, 1987

*Lloyd N. Cutler*

# Judge Bork: Well Within the Mainstream

WASHINGTON POST  
September 16 1987

The book against Robert Bork is that he is "outside the mainstream" of contemporary judicial philosophy. To locate the "mainstream" for us, the bookmakers cite such recent and current paragons as Justices Hugo Black, John Harlan, Potter Stewart, Byron White, Lewis Powell and John Paul Stevens. They are portrayed as conservative moderates, in contrast to Bork the ideologue of the extreme right.

But there is something wrong with this picture. It is at odds with the recorded views of these distinguished justices themselves.

Let's start with Justice Stevens. He stated publicly this summer what he had already expressed privately at the request of the American Bar Association's Judicial Selection Committee, namely, that he welcomes Judge Bork's nomination. Stevens went on to say, after quoting from one of Bork's opinions, that Bork's judicial philosophy "is consistent with the philosophy you will find in opinions by Justice Stewart and Justice Powell and some of the things that I have written." This was hardly an off-the-cuff remark. During Stevens' years on the court he has reviewed many Bork opinions and heard him argue many government cases as solicitor general. It cannot be squared with the extravagant characterizations of Bork as a throwback to the era of Simon Legree and Dred Scott.

There is strong judicial evidence to support Stevens' view. Consider this list of the moderate justices, so rightly admired by Bork's present opponents, who dissented from the very Supreme Court opinions that Bork is now being attacked,

**"His views were and are widely shared by justices and academics who are in the moderate center."**

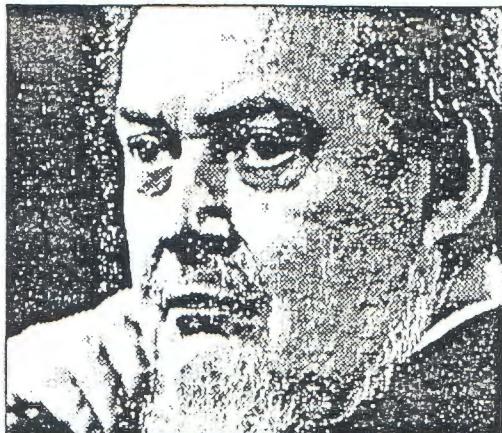
for having criticized in his days as a law professor. For the most part, Bork's criticisms support what these moderate justices said in their dissents.

In *Harper v. Virginia*, the poll tax case, the dissenters included Black, Harlan and Stewart.

In *Griswold v. Connecticut*, the contraceptive right-of-privacy case, the dissenters included Black and Stewart.

In *Roe v. Wade*, which expanded the *Griswold* precedent to cover some abortions, the dissenters included White. Stewart, who wrote a concurring opinion in *Roe*, said he joined the majority only because he bowed to the majority precedent set over his dissent in *Griswold* seven years earlier.

In *Katzenbach v. Morgan*, the Puerto Rico voting rights case, the dissenters included Harlan and Stewart. Powell, who was not appointed until several years later, criticized the *Morgan* majority's rationale in *City of Rome v. United States*.



BY JAMES K.W. ATHERTON — THE WASHINGTON POST

In *Reynolds v. Sims*, the one-man, one-vote apportionment case, the dissenters included Black and Stewart.

In *Regents v. Bakke*, the university racial quota case, the four justices who read Title VI of the Civil Rights Act to exclude race as an admissions factor included Stevens and Stewart. Four years earlier, Justice William O. Douglas (who retired before *Bakke*) had expressed the identical view in *Defunis v. Odegaard*. Two years later, Stewart reiterated the same position in *Fullilove v. Klutnick*.

In *Reitman v. Mulkey*, the state action case invalidating a provision of the California Constitution guaranteeing the freedom to sell property, the dissenters included Black, Harlan and Stewart.

In *Allen v. Wright*, the Supreme Court, with Powell and White concurring, cited Judge Bork's currently criticized dissent on standing to sue in *Vander Jagt v. O'Neill*. As for Bork's criticisms of the rationale of the unanimous 1942 Supreme Court opinion in *Shelley v. Kraemer*, striking down state court enforcement of private racial covenants, his view is similar to that expressed by Prof. Archibald Cox, Prof. Laurence Tribe and many other scholars nowhere near the extreme right.

There are a few instances, of course, where Bork's academic critiques of Supreme Court opinions were not joined either by moderate dissenting justices or by his academic colleagues. But as to most of the holdings he has criticized, his views were and are widely shared by justices and academics who are in the moderate center of the judicial spectrum, not the extreme right.

Judge Bork's views about these cases cannot reasonably be classed as outside the mainstream by the same opponents who put these moderate justices inside the mainstream. While Judge Bork is by no means the mirror image of these distinguished justices (who are by no means the mirror image of one another), neither is he their exact opposite. Whether or not one agrees with his or their views on particular cases, they are all well within the mainstream.

*The writer, a Washington attorney, was White House counsel under President Carter.*

ARIZONA REPUBLIC, September 13, 1987

BY HOWARD H. BAKER JR.

**W**ASHINGTON — When President Reagan leaves office 16 months from now, he will leave behind a legacy of federal judges committed to winning the war on crime. The judges appointed by the president during his tenure have already made a difference. A recent study showed that the president's district court appointees were far less lenient toward criminal defendants than were judges appointed by former President Carter. Over the past seven years, in fact, federal criminal sentences have increased 30 percent

overall.

The progress we have made in reducing crime must not be undone. In this regard, it is well to remember the critical role the Supreme Court plays in the administration of criminal justice at both the federal and state levels. Nearly one-third of all cases decided by the Supreme Court are criminal cases. This fact is often overlooked, yet it presents a compelling reason why Judge Robert H. Bork, the president's nominee for the court, should be confirmed.

"When it comes to crime and the safety of our citizens," Reagan said recently, "it is so important for our courts to take a tough, clear-eyed look at the Constitution's purpose to 'establish justice and ensure domestic tranquility.'" And Bork would be such a justice. Throughout his public career, he has expressed a keen understanding of the problems facing law enforcement professionals. He has consistently advanced common-sense readings of the Constitution that would help — not hinder — the search for truth in criminal trials.

From 1973 to 1977, Bork served as solicitor general, the Justice Department's chief litigator in all cases before the Supreme Court. During his tenure as solicitor general, he argued for a broad

## Baker: A Vital Role To Play In War On Crime

view of "consent" as a basis for a police search. In *U.S. vs. Edwards* (1974), Bork argued that the Fourth Amendment did not necessitate a warrant to search an individual who is already lawfully in custody. And in another case he successfully argued that the police were not required to obtain a warrant to make an arrest in a public place, if they have probable cause to believe that the suspect has committed or is committing a crime.

As solicitor general, Bork also argued and won the landmark case of *Gregg vs. Georgia*, in which the Supreme Court upheld the constitutionality of a state death penalty statute, thereby permitting the issue of capital punishment to be decided by the American people through their elected representatives. This case is especially important because the court's decision, following Bork's argument, stems directly from the Constitution. As he noted, the Constitution is not silent on the

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*"Nearly one-third of all cases decided by the Supreme Court are criminal cases. This fact is often overlooked, yet it presents a compelling reason why Judge Robert H. Bork, the president's nominee for the court, should be confirmed."*

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death penalty: in fact, it explicitly refers to capital punishment four different times.

### **Strict Adherence To Constitution**

This capital punishment case is especially relevant to the debate over Bork's nomination because it illustrates his belief that the Constitution is not a blank slate upon which may be inscribed the personal preferences of any individual judge. The Constitution has meaning, he believes, which judges are bound to follow. As he has put it, "The judge who looks outside the Constitution looks inside himself and nowhere else." And in criminal justice, as in all areas of jurisprudence, Bork is guided by a principled interpretation of the Constitution and the law.

As a member of the U.S. Court of Appeals since

1982, Bork has continued to oppose expansive interpretations of court-created procedural rules that would enable criminals to escape justice. But the constitutional rights of the accused must be protected, and Bork has ruled in favor of defendants when the law requires it. In *U.S. vs. Brown* (1987), for example, he joined in a panel decision overturning the convictions of members of the "Black Hebrews" sect, on the ground that the trial court erred in dismissing a certain juror — thereby violating the defendants' constitutional right to a unanimous jury.

Bork will be a tough Supreme Court justice, yet he will be fair. His record demonstrates that he will rule as the law requires him to. He will rule in favor of law enforcement when the law requires; but he will not hesitate to overturn convictions where the Constitution compels such a result.

Impressed by Bork's impressive record and his principled approach to all areas of the law, groups representing nearly 350,000 law enforcement professionals have endorsed his nomination. The National District Attorneys Association, the Fraternal Order of Police, the International Association of Chiefs of Police, the National Sheriffs Association, the National Troopers Coalition, the International Narcotics Enforcement Officers Association and other law enforcement groups agree that Bork's outstanding overall record merits swift confirmation for the nation's highest court.

The assessments of the police officers in the streets have been seconded by Bork's colleagues in the legal community. Former Chief Justice Warren Burger has praised Bork as the most qualified nominee in 50 years. Justice John Paul Stevens has hailed Bork as "very well qualified and a very welcome addition to the court." The American Bar Association, for the second time in five years, has given Bork its highest recommendation.

By selecting Bork, the president has found an outstanding replacement for retiring Justice Lewis Powell. The Supreme Court needs a full complement of nine justices when it reconvenes, the first Monday in October. The Senate should act without additional delay to ensure that the ninth justice is Robert H. Bork.

DETROIT NEWS  
September 14, 1987

## Hysteria Surrounds Bork Nomination

Look for a lot of hysteria to be whipped up as the nomination of Judge Robert H. Bork to the U.S. Supreme Court comes before the Senate for confirmation. This hysteria has nothing to do with Judge Bork's qualifications. It has been many years since a man of such commanding intellectual and legal qualifications has been nominated to the Supreme Court. Bork will undoubtedly leave his mark on American legal history — if the politicians don't sabotage him first.

To understand why the politicians and the organized special interests are so afraid of this man, you have to go back to what has been happening in the American legal system over the past 30 years. Many of the drastic social policy changes of the past generation — legalizing abortion, banning prayer in school, creating sweeping new "rights" for criminals, the imposition of job quotas, etc. — were never voted by any Congress. They were imposed by judges.

Whatever the merits or demerits of these policies, they were never products of the democratic process. Nor were they ever written into the Constitution. Only by judicial make-believe (lying, if you prefer plain English) were these called "constitutional rights."

**ORGANIZED SPECIAL** interests who got what they wanted didn't worry themselves about where these policies came from. Pro-abortion groups, racial lobbies

**Opposition arose against this judicial adventurism.**

and numerous other special-interest organizations took what they got and looked forward to more.

Ordinarily, you might expect Congress to resent and resist the courts' taking over their job of creating laws and policies. That is the whole point of the separation of powers. But the liberals in Congress knew that there was no way they could dare to vote for the kind of extremist liberal policies that unelected judges were imposing.

Liberal politicians therefore joined the chorus cheering for judges who imposed adventurous social policies — policies almost invariably opposed by the general public. Courts became the favorite way of doing an end-run around the democratic process and imposing the ideas of the anointed.

Over the years, two kinds of opposition arose against this judicial adventurism — opposition to the particular policies and opposition to the whole idea that judges should be creating "rights" out of thin air to suit their own political ideology. The most dramatic recent example of this revulsion against power-grabbing judges was California voters' 1986 rejection of Rose Bird and other members of the state Supreme Court who had dreamed

### Thomas Sowell

up a long series of phony reasons why death penalties could never be carried out.

**FEDERAL JUDGES**, of course, are not elected. They are appointed for life. They are therefore the prime hope of liberals to continue promoting liberal policies, even when the voters are sick of them.

How does Judge Bork fit into all this? During a long and distinguished career as a law professor and as an appellate judge, Bork has steadfastly argued that the judge's role is to enforce the laws passed by others — not to make up his own laws, policies and "rights." If Bork gets his way on the Supreme Court, those liberals in Congress who believe in abortion, busing and other unpopular policies will have to stand up and vote for them, instead of having judges do their dirty work for them.

Naturally, during Bork's confirmation hearings no one is going to admit that the real issue is how to keep on circumventing the democratic process and depriving the voting public of the right to control its own destiny. Instead, the liberal politicians will pick over every word that Bork has ever spoken to find something that can be lifted out of context to smear him.

Meanwhile, special-interest organizations have already begun a media campaign to depict Bork as a monster. Before the hearings are all over, Bork may even get stern moral lectures from Ted Kennedy, the hero of Chappaquiddick.

The purely political nature of the opposition to Judge Bork has been made embarrassingly clear by the inconsistent statements of Sen. Joseph Biden, chairman of the Senate Judiciary Committee, which will hold hearings on the nomination. Last year Biden said that he would have to vote for Bork if he were nominated to the Supreme Court, even though special interests would be angered. This year, after Bork was in fact nominated and the special interests put the heat on Biden, the senator reversed himself and now says he will vote against Bork:

This is the man who will be in charge of the hearings. Even some members of his own party are embarrassed that his verdict was announced before the hearings began.

But, however phony the issues raised and however farcical the posturing of politicians during these hearings, what is at stake is deadly serious for the future of this country. They are deciding whether you are to live under laws of your own choosing or continue to be used as a guinea pig by the social experimenters. A letter to your senators can let them know how you feel about it.

NEW YORK TIMES  
September 27, 1987

# That Was the Real Bork Who Testified

By Joseph Goldstein

**W**HAT is the real Robert H. Bork? This is the question "all of us are asking," Senator Edward M. Kennedy said after listening to 27 hours of Judge Bork's testimony. I believe I know the answer.

I know Judge Bork well. I have been a member of the Yale Law School faculty for more than 31 years, and was a colleague of his during his entire tenure at Yale. I served with him on faculty committees and audited sessions of the seminar he offered with Alexander M. Bickel.

During the last 10 years I have devoted most of my time to teaching constitutional law. I have been a registered Democrat for all of my voting life and, for many years, I have supported the work of the American Civil Liberties Union, the N.A.A.C.P. and the Planned Parenthood Association.

Joseph Goldstein is professor of law at the Yale Law School.

I take Senator Kennedy's question to mean that he and other Senators who publicly committed themselves in advance of the hearing are prepared to change their minds if they learn they have wrongly assessed the nominee.

In essence, the Senator is asking these questions:

"Is the real Robert Bork the person I have described as racist, sexist and an opponent of individual liberty and equal justice, who will disregard Supreme Court precedent, roll back the clock and uproot decades of settled law in order to write his own ideology into law?"

Or, "Is the real Robert Bork the person whose testimony before the committee and whose record as Solicitor General and as court of appeals judge demonstrates that he is sensitive to the rights of minorities and women, understands that every person is entitled to the equal protection of the law, recognizes the importance of precedent, even if developed in a manner contrary to his judicial philosophy, and strongly believes there is no place for a personal political or social agenda in the way Justices must carry out their work?"

The real Robert Bork is the latter.

Any U-turns have not been his — but will have to be made by supporters and detractors who brought to the hearing prematurely drawn portraits of how Judge Bork will behave if he becomes Justice Bork.

Judge Bork was not disingenuous in his testimony. He was for the first time in his career publicly addressing as more than hypothetical the question, "How will I carry out the work of a Justice of the Court that has the final say?" This is also the question the Senate Judiciary Committee is asking of him and that he has forthrightly sought to answer.

Judge Bork has faithfully performed each of his previous jobs in accord with its distinctive purpose. He has explained how he intends to carry out the special responsibilities of a Justice of the Supreme Court. He recognizes, and he asks the Senate to recognize, the differences between the classroom and the courtroom; between article, speech, brief and judicial decision; between teacher, Solicitor General and court of appeals judge. What he may have said or done in carrying out his duties in other settings must not be confused with what he will say or do as Justice Bork.

Judge Bork appreciates the awe-

some burden that comes with being a Justice on the highest court. Thus, he can say with conviction that he will go to the Court with open eyes and ears, eager "to read the briefs and discuss things with counsel and discuss things with my colleagues." He speaks with a commitment to the rule of the Constitution, to constructions of it by the Court and to the rule of law.

That is his agenda — and it is the only proper agenda for a Justice of the Supreme Court. The political and social agendas of his supporters or detractors must not be tagged to him. Some of these seem not to have understood that Judge Bork has been trying to respond to questions he has never before addressed publicly — how he will go about his work as a Justice of the Court. Judge Bork will not forget, as Justice John Marshall stressed in *McCulloch v. Maryland*, that his task will be to expand a written Constitution — "intended to endure for ages to come, and, consequently, to be adapted to the various crises of human affairs."

He will be what he is — a thoughtful, decent human being who understands and will take seriously the duties of his office.

U.S. Department of Justice  
Washington, D.C. 20530

A RESPONSE TO THE CRITICS

OF

JUDGE ROBERT H. BORK

Office of Public Affairs  
September 12, 1987

## EXECUTIVE SUMMARY

A detailed analysis of recent critical reports on Judge Bork shows a pattern of distortion and error that cause them seriously and systematically to misstate his record and views.

- The statistical reports exclude his unanimous decisions -- more than 85% of his cases -- concentrating on a small, unrepresentative sample.
- The reports ignore that Judge Bork has been in the majority in 95% of the cases he has heard.
- The reports dismiss Judge Bork's perfect record of nonreversal in the Supreme Court: not one of the more than 400 opinions that he has authored or joined has ever been reversed. They claim it is "uninformative" because the Supreme Court has never reviewed an opinion he has written. But:
  - The Supreme Court has reviewed opinions he has joined and has always affirmed them;
  - The Supreme Court has reviewed six of the 20 cases in which Judge Bork filed dissenting opinions, and agreed with Judge Bork's dissent in all six.
  - The Court's repeated rejection of petitions to review Judge Bork's other opinions shows his consistent excellence, since the Court grants review principally to correct error.
- The reports employ an arbitrary and misleading methodology, use evidence in a highly selective manner, and tend distressingly toward inflammatory mischaracterization. The reports persistently and flagrantly distort the small sample of cases they address:
  - Public Citizen describes one case in which Judge Bork ruled for a labor union and against a federal agency as "pro-business," because unions are "in the business" of representing workers.
  - Judge Bork's important and expansive decisions upholding First Amendment freedom of the press cases are caricatured as "pro-business" because newspapers, radio stations, and other media are "businesses."
  - Public Citizen describes a particular vote by Judge Bork in one section of its report as "pro-business" because the plaintiff's home was a ranch, but in another section as evidence of Judge Bork's slamming the courthouse door on the fingers of the same plaintiff's assertion of individual rights.

- The reports twice characterize as "pro-business," cases in which Judge Bork was merely voting to shift costs among businesses.
- The reports criticize him as being motivated by his own political agenda. Yet Judge Bork neutrally applies the law. For example, in a significant First Amendment opinion, Judge Bork voted against a conservative political action group.
- o Failing to heed Democratic appointee Judge Harry Edwards' admonition that "efforts to tag judges as 'liberal' or 'conservative' are fundamentally misguided," the reports insist on pinning labels on him. These reports also ignore the fact that Judge Bork has agreed with each of his Democratic appointed colleagues on the court between 75% and 91% of the time.
- o Even the skewed and truncated sample of nonunanimous cases show that Judge Bork is a fair, mainstream judge:
  - Judge Bork was in the majority in fully 70% of those cases (39 of 56 decisions);
  - Judge Bork voted with a Democratic appointee in 47% of these cases (26 of 56 cases); and if one excludes his 14 panel dissents, he voted with a Democratic appointee 62% of the time;
  - In en banc cases, Judge Bork voted with Democratic appointees 92% of the time.
- o Analysis of Judge Bork's entire record presents a more accurate picture:
  - The AFL-CIO finds Judge Bork "opposed to the claims of . . . labor," but ignores the fact that in 46 cases involving labor and workplace safety in which the outcome was unambiguous he voted for the union or employee 74% of the time (34 cases);
  - The ACLU says that if Bork is confirmed, "civil liberties in this country would be radically altered," but fails to note that in 7 of 8 civil rights cases Judge Bork voted for the claimant -- 88% of the time;
  - The Biden report refers to Bork's "extremely restrictive" view of the First Amendment, but doesn't mention that in the 14 First Amendment cases with unambiguous outcomes, Judge Bork voted for the party seeking First Amendment protection 43% of the time (6 cases).

- o Justice Scalia, unanimously confirmed last year by the Senate and widely acknowledged to be "in the mainstream of our society" (Senator Kennedy), voted with Judge Bork 98% of the time in the 86 panels on which they sat together on the appeals court.
  - On one of the two occasions on which they disagreed, Judge Bork voted to afford greater constitutional protection than Judge Scalia; that case was Ollman v. Evans, the celebrated First Amendment case, in which Judge Scalia criticized Judge Bork for his liberal reading of the Constitution.
  - Many of the Bork opinions most criticized in the reports as "extreme," like Vinson v. Taylor, Cyanamid Co., and Dronenburg V. Zech, were joined in full by Judge Scalia.
  - Not one of the studies explains why Judge Scalia is in the mainstream, but Judge Bork is not.
- o Even Justice Powell's distinguished and fair-minded record on the Supreme Court can be manipulated and misrepresented as "extreme" by the defective statistical analysis employed by the studies:
  - Using the spurious techniques employed by the reports, (1) over his career Justice Powell is seen to have voted against civil rights plaintiffs in 79% of all non-unanimous decisions decided while he was a member of the Court, and (2) in favor of business interests in 78% of nonunanimous cases during the past five years.
  - This shallow statistical treatment of Justice Powell's record obviously obscures and distorts his evenhanded administration of justice over a long and distinguished career. But precisely the same is true of the distorted and misleading treatment by the studies of Judge Bork's record.
- o The Biden report erroneously claims that the Supreme Court disagreed with Judge Bork in Vinson v. Taylor, a sexual harassment case brought under Title VII.
  - The Supreme Court in fact agreed with Judge Bork that evidence could be introduced to determine if the advance was "welcome."
  - The Supreme Court also agreed with Judge Bork that the employer was not strictly liable for the conduct of its employees.
  - Judge Bork assumed, and did not question, the applicability of Title VII suits to claims for sexual harassment.

- o The Biden report claims that Judge Bork's opinion in Dronenburg represents "a novel approach to lower court constitutional adjudication."
  - The report neglects to mention that the Supreme Court, in an opinion joined by Justice Powell, subsequently agreed with Judge Bork's conclusion that homosexual conduct is not constitutionally protected under a substantive due process rationale. See Bowers v. Hardwick.
- o Justice Powell has stated the fundamental principle that judges hear no case that exceed "the proper -- and properly limited -- role of the courts in a democratic society." Yet the reports attack Judge Bork for denying access to parties who ask the courts to violate this constitutional limit on the judicial power.
- o Judge Bork respects the law as a neutral set of rules, impartially applied to all people. In contrast, the special interests evaluate judges precisely the way that they rank politicians -- according to the number of times they deliver results desired by a particular special interest to further a political goal.
- o Judge Bork's jurisprudence demonstrate his fairmindedness, commitment to the principle of judicial restraint, and respect for established legal precedent. The portrait of Judge Bork that emerges is that of an exceptionally able jurist in the mainstream of American legal tradition.

THE WHITE HOUSE

WASHINGTON

September 23, 1987

MEMORANDUM TO SENATOR BAKER

FROM: WILLIAM I. BALL, III *WIB*

I will meet with Slade Gorton at 9:15 a.m. on Monday, September 28, to review some names he can help us with on the Bork nomination. He will be in town Monday and Tuesday.

cc. A.B. Culvahouse  
John Tuck

### SUMMARY OF SIGNIFICANT STATISTICS

(1.) Of over four hundred cases in which he has been in the majority, Judge Bork has never been reversed by the Supreme Court. Thus in every such case, the Supreme Court has been content to leave intact Judge Bork's position as the law of the D.C. Circuit.

(2.) Judge Bork has been in the majority in over 95% of the 416 cases in which he has participated.

(3.) Of Judge Bork's 20 dissenting opinions, the Supreme Court has reviewed six and has adopted Judge Bork's position in each. The D.C. Circuit sitting en banc has reviewed one case in which he dissented, and the full court adopted his position.

(4.) In all but 14 of the 416 cases in which Judge Bork participated, or 96% of the time, at least one other appellate judge agreed with him.

(5.) Judge Bork has agreed with his liberal colleagues on the D.C. Circuit in a high percentage of cases.

(a.) Ruth Bader Ginsburg	91%	(b.) Abner J. Mikva	82%
(c.) Patricia M. Wald	76%	(d.) Harry T. Edwards	80%
(e.) J. Skelly Wright	75%		

(6.) Justice Powell has agreed with the position taken by Judge Bork in nine out of ten, or 90%, of the instances in which opinions written or joined by Judge Bork have been reviewed by the Supreme Court.

(7.) The 56 nonunanimous cases examined in the Public Citizen Study amount to only 14% of the total cases in which he has participated. Of those 56 cases, Judge Bork was in the majority 70% of the time and he voted with a Democratic appointee 47% of the time. Excluding his panel dissents, Judge Bork voted with a Democratic appointee 62% of the time in nonunanimous cases.

(8.) Applying Public Citizen's spurious methodology, Judge Bork took the "liberal" position over 40% of the time in nonunanimous cases.

(9.) Judge Bork voted for the civil rights claimant in 7 of 8 substantive civil rights cases, or 88% of the time.

(10.) Considering all Judge Bork's cases using Public Citizen's techniques, Judge Bork voted in favor of unions or employees 74% of the time in 46 cases in which there was a clear outcome for either the union/employee or the employer. Judge Bork voted in favor of the first amendment claimant 43% of the time in the 14 cases decided unambiguously for or against a first amendment claim.

(11.) Under Public Citizen's spurious methodology, Justice Powell's fine record can be manipulated to show that, in the past five Supreme Court Terms, he voted for the business interest fully 78% of the time in nonunanimous cases, and that, during his entire career, he voted against the civil rights claimant 79% of the time in nonunanimous cases.